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Supreme Court, U.S.
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No. 02-695

In The
Supreme Court of the United States

MICHAEL FITZGERALD, Treasurer, State of Iowa,

Petitioner,

v.

RACING ASSOCIATION OF CENTRAL IOWA, IOWA GREYHOUND ASSOCIATION, DUBUQUE RACING ASSOCIATION, LTD. and IOWA WEST RACING ASSOCIATION,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Iowa

BRIEF OF POLK COUNTY, IOWA AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

JOHN P. SARCONE*
County Attorney
Authorized Law Officer
MICHAEL B. O'MEARA
Assistant County Attorney
Polk County, Iowa
206 Sixth Avenue
Des Moines, Iowa 50309
(515) 286-3737

Attorneys for Amicus Curiae
**Counsel of Record*

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INTEREST OF AMICUS CURIAE

As Amicus Curiae,[1] Polk County, Iowa ("Polk County") has a special interest in supporting Respondents, particularly Respondent Racing Association of Central Iowa, operator of Prairie Meadows Racetrack and Casino. Polk County is a political subdivision of the State of Iowa and is uniquely qualified to bring to the attention of the Court relevant matter not already brought to its attention by the parties which Polk County believes may be of considerable help to the Court.[2] Supreme Court Rule 37.1.

Polk County has been involved in legalized gaming since the Iowa General Assembly adopted the Iowa Pari-Mutuel Waging Act, Iowa Code Chapter 99D, in 1983. In 1984, the Polk County Board of Supervisors issued $40 million in revenue bonds to finance the construction of a racetrack in Altoona, Iowa. In 1986, Respondent Racing Association of Central Iowa was organized as a non-profit entity to build and operate the facility. Prairie Meadows Racetrack opened as a pari-mutuel horse racing facility in March 1989. During the initial years of operation, the enterprise encountered financial difficulties, resulting in Chapter 11 filing in November 1991. As part of the plan for reorganization, Polk County took possession of the site, improvements and personal property. Respondent Racing

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[1] Pursuant Supreme Court Rules 37.4 and .6, no motion for leave to file this brief is required, as this brief is submitted on behalf of a county by its authorized law officer.

[2] Polk County is Iowa's largest county, with a population in the 2000 census of 374,601. Iowa's capital city, Des Moines, is located in Polk County, as is the city of Altoona, which is the site of Prairie Meadows Racetrack and Casino, operated by Respondent Racing Association of Central Iowa.

Association of Central of Iowa, as licensee under Iowa Code Chapter 99D, continued to operate the facility. In March 1994, the Iowa General Assembly amended Iowa Code Chapter 99F authorizing the use of slot machines at pari-mutuel facilities licensed prior to January 1, 1994. Iowa Code § 99F.4A. Through utilization of Polk County funds, slot machines were purchased and installed at Prairie Meadows and the casino portion of the facility was opened to the public in April 1995. To the present day, Polk County has maintained its ownership interest in the land and improvements at Prairie Meadows Racetrack and Casino.

From 1995 through 1997, Polk County and the Racing Association of Central Iowa were parties to an operating agreement that essentially provided Polk County with all net receipts after payment of operating expenses, including state gaming taxes. From 1998 through 2002, Polk County and the Racing Association of Central Iowa were parties to a lease agreement that provided payment to the County of a monthly rent plus payment of a fixed sum from net receipts as determined after payment of reasonable expenses, including the state gaming tax authorized by Iowa Code § 99F.11. These distributions from net receipts are authorized by statute which requires licensees to distribute any net income not used to retire debt or supplement horse or dog purses for educational, civic, public, charitable, patriotic or religious uses. Iowa Code § 99F.6(4)(a). Such uses include "erecting and maintaining public buildings or works, or otherwise lessening the burden of government . . . ." Iowa Code § 99B.7(3)(b). From

1994 through 2002, Respondent Racing Association of Central Iowa has dedicated and distributed over $186 million to Polk County.[3]

By 2002, the escalating state gaming tax on revenues from slot machines at Iowa racetracks, authorized by Iowa Code § 99F.11, had significantly impeded the ability of Respondent Racing Association of Central Iowa to dedicate and distribute its net receipts to Polk County and the charities it supports. If the Court does not uphold the ruling of the Iowa Supreme Court, Polk County will not receive the final one million dollars Respondent had dedicated for distribution in 2002.

Polk County and the Racing Association of Central Iowa are presently parties to a lease agreement that runs through December 2010. As before, Polk County receives a monthly rent, plus a fixed sum from net receipts as determined after payment of expenses, including state gaming tax. Pursuant to this agreement, Polk County will also receive fifty percent of the lump sum recovery awarded by the Iowa Supreme Court to Racing Association of Central

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[3] In addition to retirement of all debt related to facility construction ($65.5 million), direct Polk County use (and indirect tax relief to Polk County taxpayers) includes retirement of other County indebtedness, e.g., sewer and drainage projects ($22.5 million), construction of an adult jail annex ($8.3 million), construction of a juvenile detention facility ($9.6 million), construction of two neighborhood senior centers ($3.9 million), purchase of new computer systems for County government ($10 million) and County road improvements ($3.5 million). County financial participation in multi-government and economic development projects include construction of a metropolitan highway by-pass with the State of Iowa Department of Transportation ($18 million) and construction of a downtown Des Moines parking garage ($10 million).

Iowa. Further, if the gaming tax laws should be amended to reduce the gaming taxes payable by Racing Association of Central Iowa, and its net receipts thereupon improve accordingly, they shall pay Polk County one-third of any such improvement. Rather than providing Respondents a windfall, an affirmation by this Court of the decision below will directly benefit the government and taxpayers of Polk County.

Pursuant to an agreement between Polk County and the Vision Iowa Board,[4] a public instrumentality of the State of Iowa, Polk County is obligated to use essentially all funds received as rent and net receipts from Respondent Racing Association of Central Iowa, for the period January 1, 2003 through December 31, 2010, to construct and operate the Iowa Events Center, a $219 million arena and exhibition hall complex in downtown Des Moines.[5]

[4] Vision Iowa was established by the 2000 Iowa General Assembly and the Governor of Iowa to support community projects that build on Iowa's unique assets and values and expand the recreational, cultural, educational and entertainments in Iowa. Iowa Code § 15F.101 et seq. Petitioner Michael Fitzgerald, Treasurer, State of Iowa, is a member of the Vision Iowa Board. Iowa Code § 15F.102(2)(g).

[5] The Iowa Events Center is the focal point of an historic $340 million commitment by Polk County, the State of Iowa, the City of Des Moines, other Polk County municipalities and numerous private entities and persons to the Capital City Vision Project. In addition to constructing and operating a 16,000 seat arena and a 100,000 square foot exhibition hall, Polk County will also renovate and operate the existing Veterans Memorial Auditorium. Polk County is also contributing $5 million toward the construction of a new Des Moines Public Library, $5 million toward the construction of the World Food Prize Center, $3.5 million toward the construction of a new Science Center of Iowa and $1.5 million toward the construction of the John and Mary Pappajohn Learning Center. It is the plan of Polk County to fund all

(Continued on following page)

Polk County and its citizens are truly partners with and beneficiaries of Respondent Racing Association of Central Iowa and have a special interest in supporting Respondents. If the Court does not affirm the ruling of the Iowa Supreme Court, Respondent Racing Association of Central Iowa will find it extremely difficult, if not impossible, to continue its commitments to Polk County and its citizens, directly affecting the Capitol City Vision Project.

SUMMARY OF ARGUMENT

The issue before the Court is whether the Equal Protection Clause permits the State of Iowa to impose one tax rate on revenue from riverboat casinos, the overwhelming majority of which revenue comes from slot machines, and a higher tax rate on revenue from racetrack enclosures, essentially all of which revenue comes from slot machines. Amicus Curiae Polk County, Iowa urges the Court to uphold the decision of the Iowa Supreme Court in *Racing Association of Central Iowa v. Fitzgerald*, 648 N.W.2d 555 (2002), *cert. granted*, 123 S.Ct. 963 (Jan. 17, 2003) (No. 02-695), which found the Iowa tax rate on revenue from racetrack enclosures to be violative of equal protection rights under both the United States Constitution and the Iowa Constitution. The decision of the Iowa Supreme Court is in full accord and consistent with this Court's precedent concerning rational basis review of

these obligations from Prairie Meadows distributions and not increase its taxpayers' property tax rates.

equal protection challenges to state tax statutes, *Nordlinger v. Hahn*, 505 U.S. 1, 15-16 (1992); *Allegheny Pittsburgh Coal Company v. County Comm'n of Webster Cty.*, 488 U.S. 336 (1989).

ARGUMENT

The Decision of the Iowa Supreme Court Is in Full Accord and Consistent with this Court's Precedent.

The key to appreciating the analysis and conclusion of the Iowa Supreme Court lies in one sentence from its ruling: "In determining whether the tax statute is constitutional, we must consider whether the asserted purpose behind this tax could have been the genuine goal of the legislation." *Racing Association of Central Iowa*, 648 N.W.2d at 560, citing *Nordlinger*, 505 U.S. at 15-16. As this Court acknowledged in *Nordlinger*, there are cases "where the facts preclude any plausible inference" that the asserted purpose for a taxing scheme was the actual purpose. 505 U.S. at 16, citing *Allegheny Pittsburgh Coal Company*, 488 U.S. 336.

Without providing explicit attribution, the Iowa Supreme Court implicitly adopted a line of reasoning and conclusion totally consistent with the *Allegheny Pittsburgh* decision:

> Overriding this entire issue is the fact that the 1994 legislation was designed to save the racetracks and riverboats from financial distress.
>
> . . .

> The very same legislation designed to help the racetracks recover from economic distress also increased the tax on racetrack slots at a rate eighty percent higher than the tax imposed on riverboat slots. Though the state contends the stated purpose behind the racetracks is to encourage economic development and promote agriculture, this differential tax is contrary to such alleged intent.
>
> Moreover, any stated benefit from the 1994 legislation is substantially jeopardized by the new tax rate imposed on the racetracks. We 'need not in equal protection cases accept at face value assertions of legislative purposes, when . . . the asserted purpose could not have been a goal of the legislation.'

Racing Association of Central Iowa, 648 N.W.2d at 560, citing, *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 n. 16.

In short, the gaming tax legislation fails the rational basis test because the goal advanced by the state, the differential tax rate between riverboats and racetrack enclosures, conflicts with the unquestioned legislative goal of economic development and promotion of agriculture. This is the analysis and conclusion authorized by this Court in *Allegheny Pittsburgh*, 488 U.S. at 345-6. The decision of the Iowa Supreme Court is in full accord and consistent with this Court's precedent.

CONCLUSION

Amicus Curiae Polk County, Iowa has a clear interest in supporting Respondent Racing Association of Central Iowa. For the reasons stated above, the decision of the Iowa Supreme Court should be upheld.

Respectfully submitted,

JOHN P. SARCONE
County Attorney
Authorized Law Officer
Counsel of Record
MICHAEL B. O'MEARA
Assistant County Attorney
Polk County, Iowa
206 Sixth Avenue
Des Moines, Iowa 50309

Attorneys for Amicus Curiae